

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

BRG Investments, LLC,

and

Bucks Inc,
Appellant(s),

v.

Douglas County Board of Equalization,
Appellee.

Case No. 14C 508

Case No: 16C 0259, 16C 260, 16C 261, 16C
262, 16C 263

Decision and Order Affirming the
Determinations of the Douglas County
Board of Equalization

For the Appellant(s):

Sean T. Mullen,
Sean T. Mullen P.C., L.L.O.

For the Appellee:

Shakil A. Malik,
Deputy Douglas County Attorney.

These appeals were heard before Commissioners Steven A. Keetle and Robert W. Hotz.

I. THE SUBJECT PROPERTY

The Subject Property in Case No. 14C 508 is a commercial parcel located at 3909 North 132nd Street, Omaha, in Douglas County, Nebraska. The parcel is improved with a gas station that includes a 3,168 square foot convenience store and a 1,098 square foot car wash. The legal description of the parcel is found at Exhibit 6. The property record card for the Subject Property is found at Exhibit 13.

The Subject Property in Case No. 16C 259 is a commercial parcel located at 2635 S. 160th Street, Omaha, in Douglas County, Nebraska. The parcel is improved with a gas station that includes a 4,370 square foot convenience store and a 2,240 square foot car wash. The legal description of the parcel is found at Exhibit 1. The property record card for the Subject Property is found at Exhibit 7.

The Subject Property in Case No. 16C 260 is a commercial parcel located at 3435 S 42nd Street, Omaha, in Douglas County, Nebraska. The parcel is improved with a gas station that includes a 4,332 square foot convenience store and a 2,200 square foot car wash. The legal description of the parcel is found at Exhibit 2. The property record card for the Subject Property is found at Exhibit 8.

The Subject Property in Case No. 16C 261 is a commercial parcel located at 6003 Center Street, Omaha, in Douglas County, Nebraska. The parcel is improved with a gas station that includes a 4,370 square foot convenience store and a 2,352 square foot car wash. The legal description of the parcel is found at Exhibit 3. The property record card for the Subject Property is found at Exhibit 9.

The Subject Property in Case No. 16C 262 is a commercial parcel located at 20402 Veterans Drive, Omaha, in Douglas County, Nebraska. The parcel is improved with a gas station that includes a 4,837 square foot convenience store and a 1,615 square foot car wash. The legal description of the parcel is found at Exhibit 4. The property record card for the Subject Property is found at Exhibit 10.

The Subject Property in Case No. 16C 263 is a commercial parcel located at 2765 S. 13th Street, Omaha, in Douglas County, Nebraska. The parcel is improved with a gas station that includes a 3,680 square foot convenience store and a 1,660 square foot car wash. The legal description of the parcel is found at Exhibit 5. The property record card for the Subject Property is found at Exhibit 11.

II. PROCEDURAL HISTORY

The Douglas County Assessor (the County Assessor) determined that the assessed value of the Subject Property in Case No. 14C 508 was \$1,441,900¹ for tax year 2014. BRG Investments LLC (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$1,112,049.² The County Board determined that the taxable value of the Subject Property for tax year 2014 was \$1,441,900.³

The County Assessor determined that the assessed value of the Subject Property in Case No. 16C 259 was \$2,081,400⁴ for tax year 2016. Bucks Inc (the Taxpayer) protested this assessment to the County Board and requested an assessed valuation of \$1,646,588.⁵ The County Board determined that the taxable value of the Subject Property for tax year 2016 was \$2,081,400.⁶

¹ Exhibit 6

² Exhibit 13:17.

³ Exhibit 6.

⁴ Exhibit 1.

⁵ Exhibit 7:15.

⁶ Exhibit 1.

The County Assessor determined that the assessed value of the Subject Property in Case No. 16C 260 was \$1,870,000⁷ for tax year 2016. Bucks Inc (the Taxpayer) protested this assessment to the County Board and requested an assessed valuation of \$1,310,542.⁸ The County Board determined that the taxable value of the Subject Property for tax year 2016 was \$1,870,000.⁹

The County Assessor determined that the assessed value of the Subject Property in Case No. 16C 261 was \$2,327,400¹⁰ for tax year 2016. Bucks Inc (the Taxpayer) protested this assessment to the County Board and requested an assessed valuation of \$1,685,728.¹¹ The County Board determined that the taxable value of the Subject Property for tax year 2016 was \$2,327,400.¹²

The County Assessor determined that the assessed value of the Subject Property in Case No. 16C 262 was \$1,914,100¹³ for tax year 2016. Bucks Inc (the Taxpayer) protested this assessment to the County Board and requested an assessed valuation of \$1,294,491.¹⁴ The County Board determined that the taxable value of the Subject Property for tax year 2016 was \$1,914,100.¹⁵

The County Assessor determined that the assessed value of the Subject Property in Case No. 16C 263 was \$1,264,200¹⁶ for tax year 2016. Bucks Inc (the Taxpayer) protested this assessment to the County Board and requested an assessed valuation of \$1,098,323.¹⁷ The County Board determined that the taxable value of the Subject Property for tax year 2016 was \$1,264,200.¹⁸

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). Prior to the hearing, the parties exchanged exhibits. At the hearing, the parties stipulated to the receipt of exchanged exhibits 1 through 11 and exhibit 13. The Commission held a hearing on May 30, 2017.

⁷ Exhibit 2.

⁸ Exhibit 8:16.

⁹ Exhibit 2.

¹⁰ Exhibit 3.

¹¹ Exhibit 9:18.

¹² Exhibit 3.

¹³ Exhibit 4.

¹⁴ Exhibit 10:14.

¹⁵ Exhibit 4.

¹⁶ Exhibit 5.

¹⁷ Exhibit 11:15.

¹⁸ Exhibit 5.

III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.¹⁹ When the Commission considers an appeal of a decision of a County Board of Equalization, a presumption exists that the "board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action."²⁰

That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.²¹

The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.²² Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.²³

A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.²⁴ The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary.²⁵

In an appeal, the commission "may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The commission may consider all questions necessary to determine taxable value of property as it hears an appeal or

¹⁹ See, Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.), *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal." *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

²⁰ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

²¹ *Id.*

²² Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

²³ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

²⁴ Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

²⁵ *Bottof v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

cross appeal.”²⁶ The commission may also “take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge...,” and may “utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.”²⁷ The Commission’s Decision and Order shall include findings of fact and conclusions of law.²⁸

IV. VALUATION

A. Law

Under Nebraska law,

[a]ctual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.²⁹

“Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach.”³⁰ “Actual value, market value, and fair market value mean exactly the same thing.”³¹ Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.³² All real property in Nebraska subject to taxation shall be assessed as of January 1.³³ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.³⁴

²⁶ Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.).

²⁷ Neb. Rev. Stat. §77-5016(6) (2016 Cum. Supp.).

²⁸ Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

²⁹ Neb. Rev. Stat. §77-112 (Reissue 2009).

³⁰ *Id.*

³¹ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

³² Neb. Rev. Stat. §77-131 (Reissue 2009).

³³ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

³⁴ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

B. Summary of the Evidence

The Subject Property in each of these appeals are gas stations and convenience stores owned by the Taxpayer. Each of the Subject Properties consists of land, a building that is a convenience store, a building that is an automatic car wash, and components of the fueling station, including a canopy, paving, and in some cases light poles.

Evidence was presented which demonstrated that the cost approach was used by the County Assessor when determining the assessed value of the Subject Properties and that the County Board agreed with the assessments by the County Assessor. Micaela Larsen, an appraiser with the County Assessor (the Appraiser), testified that the costs determined by the County were derived using a Computer Assisted Mass Appraisal (CAMA) program model which utilized costs based on the Marshall and Swift Valuation Service. The County Assessor utilized an appraisal model that calculated the Replacement Cost New (RCN) of the buildings and improvements and then calculated depreciation for all of the buildings and other improvements. After deducting depreciation, the total was then multiplied by a Neighborhood Adjustment Factor to calculate the Replacement Cost New Less Depreciation (RCNLD).

The Taxpayer alleged that the determination of the County Board was unreasonable and arbitrary because the depreciation applied was lower in the present appeals than it had been in appeals in previous tax years for the same properties. The record does not contain the prior year's Property Record Files for the Subject Properties. The Appraiser testified that the Property Record Files (PRFs) provided in the prior appeals contained the incorrect cost detail reports which appeared to indicate a higher depreciation amount than was actually applied by the County's appraisal model. The Appraiser testified that the PRFs offered as exhibits in this proceeding contain the correct cost detail reports and reflect depreciation being applied to all of the improvements on the Subject Property.

The Taxpayer next alleged that the factors that went into determining the depreciation which was applied to the improvements on the Subject Property were incorrect and that therefore a different depreciation should be applied to the Subject Properties. The Appraiser testified the CAMA model used for valuing commercial properties was established in 2014 and that these values have not changed since 2014. The factors that went into determining the depreciation

applied to the Subject Properties, such as replacement costs and effective age, have remained the same since that time.

The Taxpayer offered the testimony of its comptroller, Keil Brumit (the Comptroller), who is responsible for supervising the accounting functions of the Taxpayer. The Comptroller testified that his opinion of value for the Subject Properties as of the assessment year appealed are as follows: Case No. 16C 259, \$1,000,000; Case No. 16C 260, \$975,000; Case No. 16C 261, \$1,000,000; Case No. 16C 262, \$800,000; Case No. 16C 263, \$600,000; and Case No. 14C 508, \$350,000. The Comptroller indicated that his opinions of value for the Subject Properties were determined for accounting purposes and based on income using accounting principles. The Taxpayer did not offer any evidence as to whether the incomes utilized were actual income for the Subject Properties, income based on market data, or some other calculation of income. Without additional information the Commission is unable to determine the relationship of the Comptroller's opinions of value to actual value or fair market value.

The Taxpayer has not established by clear and convincing evidence that the values of the Subject Properties as determined by the County Assessor and approved by the County Board were arbitrary or unreasonable.

V. CONCLUSION

The Commission finds that there is not competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determinations. The Commission also finds that there is not clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable.

For all of the reasons set forth above, the appeals of the Taxpayer should be denied.

VI. ORDER

IT IS ORDERED THAT:

1. The decision of the Douglas County Board of Equalization determining the taxable value of the Subject Property in Case No. 14C 508 for tax year 2014 is affirmed.

2. The taxable value of the Subject Property in Case No. 14C 508 for tax year 2014 is:

Land:	\$ 731,800
Improvements:	<u>\$ 710,100</u>
Total:	\$1,441,900

3. The decisions of the Douglas County Board of Equalization determining the taxable values of the Subject Properties for tax year 2016 are affirmed.

4. The taxable values of the Subject Properties for tax year 2016 are:

Case No 16C 259

Land:	\$ 463,300
Improvements:	<u>\$1,618,100</u>
Total:	\$2,081,400

Case No 16C 260

Land:	\$ 205,800
Improvements:	<u>\$1,664,200</u>
Total:	\$1,870,000

Case No 16C 261

Land:	\$ 515,900
Improvements:	<u>\$1,811,500</u>
Total:	\$2,327,400

Case No 16C 262

Land:	\$ 595,000
Improvements:	<u>\$1,319,100</u>
Total:	\$1,914,100

Case No 16C 263

Land:	\$ 184,200
Improvements:	<u>\$1,080,000</u>
Total:	\$1,264,200

5. This Decision and Order, if no appeal is timely filed, shall be certified to the Douglas County Treasurer and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.).

6. Any request for relief, by any party, which is not specifically provided for by this Decision and Order, is denied.
7. Each party is to bear its own costs in this proceeding.
8. This Decision and Order shall only be applicable to tax years 2014 and 2016.
9. This Decision and Order is effective for purposes of appeal on October 5, 2017.³⁵

Signed and Sealed: October 5, 2017.

Steven A. Keetle, Commissioner

SEAL

Robert W. Hotz, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2016 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.

³⁵ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2016 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.